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IN THE

Supreme Court of the United States

OCTOBER TERM 1953

No. 728

ELIZABETH NOWINSKI, *Petitioner Pro Se,*

v.

RANDALL H. HAGNER & COMPANY, *Respondent.*

Reply Brief of Petitioner to Brief in Opposition

ELIZABETH NOWINSKI,
Petitioner Pro Se.

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INTRODUCTORY COMMENT

The emphasis in the respondent's brief is not on substance; he stresses form and technicalities. The respondent knows that he could not have sustained his case had the trial been fair. Those issues enumerated in the Petition are worthy of review and opinion by the highest tribunal.

QUESTION OF JURISDICTION

The rule as quoted by the respondent in the brief is incomplete. Title 28 section 1254 is as follows: The Supreme Court by a writ of certiorari may review upon petition of any party to any civil or criminal case before or after rendition of judgment.

Stern and Gressman page 12 has this to say: "It is to be noted that the jurisdiction thus granted is of an ex-

tremely comprehensive nature. There are no limitations as to the parties, status of the case, or amount of controversy. Nor are there any restrictions as to the matter at issue or the nature of the decision below."

"The power given to the Supreme Court to grant writs of certiorari in which the decision of the Court of Appeals is made final was intended to vest in this court a comprehensive and unlimited power; the power thus given is not affected by the conditions of the case as it exists in the Court of Appeals. It may be exercised before or after *any* decision by that court and irrespective of any ruling or determination therein. *Forsyth* v. *Hammond*, 166 U. S. 506.

"The Court on certiorari to review a final decree can reach back and correct errors in the interlocutory proceedings below even though no attempt was made to secure review of the interlocutory decree or even though such an attempt was made without success." *Toledo Scale* v. *Computing Scale Co.*, 261 U. S. 399 at 418.

QUESTION OF CONSTRUING A STATUTE

No such issue is presented here, and the matter of construing a statute is raised for the first time. The substantial questions raised by petitioner are of greater significance than the technicalities given in the brief. Briefly due process, fair trial, conflict of decisions, strong doubt as to correctness of decision, public importance.

Quoting from one of the cases cited by respondent:

"A decision of the United States Court of Appeals for the District of Columbia construing the Longshoreman's and Harbor Worker's Compensation, the act being national in scope and not confined in its operation to the District of Columbia where it applies as Workmen's Compensation Law, may present a question of general importance which this Court will review on certiorari.

Delvecchio v. *Bowers*, 296 U. S., 280, decided November 13, 1935.

The petitioner was charged on two counts. 1. Committing a Nuisance. 2. Violation of the provision of a lease: to wit: "that the lessee will not use said premises for any unlawful purpose or in any manner which will disturb the tenants of the building or be offensive to any other occupant of the building—nor carry on any business therein." The Emergency Rent Act though it has expired still holds until final adjudication of this case. The statute provides for this. The paramount issue in the respondent's mind is the fact of possession.

The petitioner would like to point out that even with little evidence of petitioner there was sharp conflict; that had the Court not curtailed the opportunity, the petitioner would have been able to produce a preponderance of evidence that would have affected the findings in her favor.

QUESTION OF FAIR TRIAL

Did the petitioner have a full and fair hearing, where the respondent took practically three sessions as against the petitioner who was given one hour continuance and had less than one hour for the defense. The court displayed an enormous amount of patience with the witnesses of the respondent but was in great haste to terminate the case after the respondent rested. The time element speaks for itself. Furthermore, for example, the transcript shows that direct examination of Mr. Bratch, the principal witness, covers 33 pages to 6 pages for the petitioner on direct examination. Naturally the respondent did not cross examine, there was no material to cross examine.

The petitioner was on the witness stand for less than 10 minutes scarcely scratched the surface of the defense.

Noting the attitude of the Court and the attorney can it honestly be said that the petitioner had her day in court

or that the trial in the Landlord and Tenant Court was fair?

1. She did not get the benefit of witnesses vital to her case, Mr. and Mrs. Bell, Mr. Krasner, Mrs. Mallery as shown by later affidavits. These were not just residents of Dorchester House but were adjacent neighbors to petitioners apartment who were not disturbed and except for the haste of the court would have been produced. There was presentation to the court that these witnesses were not placed under subpoena because of their verbal promise to be present. Their affidavits show this to be true. The courts offer of help was misplaced.

2. The attorney failed to object to the short continuance, actually one hour. The case closed suddenly and there were witnesses of the respondent who were under oath who were not called, and the attorney was taken by surprise.

3. There was pressure on the court because the Judge had a social engagement; there was pressure on the attorney who in his anxiety to please the court failed to give his client the full measure of protection he was in duty bound to do.

Respondent stresses the able and militant attorney, who failed to safeguard the petitioners rights, for this was favorable to him.

When the court said "I hate to turn you down Mr. Lane" it was an answer to something requested by the attorney; his request was for a longer continuance.

Justice Frankfurter said in *Fisher* v. *United States*, 328 U. S. 463, a case cited by the respondent: "It is not enough that a trial goes through the forms of law."

The petitioner, as the record will disclose did not have a fair and impartial trial. She was not given ample opportunity to present a full defense.

The petitioner called three witnesses, Mr. Thurman Hill, attorney, who lives in the same wing as the defendant, Mme.

Rybier, a professional pianist and Miss Resnick who was familiar with the music played by the petitioner. The other three were Mr. Henri, property manager of Randall H. Hagner and Company, who made the complaint; Mr. Leonard Roberts, manager of the Dorchester House to whom the attorney addressed some questions as to policies in reference to the owner were discussed. The third witness was the wife of Mr. Bratch who was called to verify a letter she wrote to petitioner thanking her for her cooperation.

CONCLUSION

Where so much responsibility is placed on the trial court, that court should be held to the highest and strictest accountability.

The respondent picks from the text of a case an isolated sentence and says the "Constitutional point is put forward to open other questions that otherwise would not come here." The respondent is mistaken. The petitioner believes conscientiously that her constitutional rights were violated. The denial of due process is the chief issue, and the other issues make it important that this court review the case. The petitioner did not have a *fair trial* and was not given time to make a complete and full defense. This is evident from the affidavit she filed with the motion requesting the case to be opened from where plaintiff rested, the morning after the trial and in all the hearings the petitioner stressed this fact. *If the attorney for petitioner is at fault in aiming to please the court this does not absolve the court.* The character of the trial resulted in a decision which is wrong and unjust and must not be allowed to stand.

The Honorable Court in its recent decision on segregation reversed previous decisions of long standing; this brought the law up to the modern concept in the social order. The court has no less power in the case before it. The decision here is incompatible with the modern living

conditions. The decision denies an individual the right to life and the pursuit of happiness where one is forced to live in an apartment building and wants to play a piano for pleasure. The testimony is untrue, exaggerated, or grossly extravagant and petitioner "was not given the opportunity to dispute it." The decision is directly in conflict with the New York case where the complainants sought to abrogate the right of a city apartment dweller of his right to the comfort of an air conditioner.

The petitioner would not have spent all the time, energy and money if she did not feel that the fundamental principles were involved.

On due process Justice Frankfurter was quoted this morning, May 25, 1954, in the *Washington Post*: "Fair play is the essence of due process." Does this case meet this test? There was an abuse of discretion by the trial court.

The Municipal Court of Appeals said there was a sharp conflict of evidence. If there is such a sharp conflict there must have been doubt in the minds of the judges when making this decision. Yet, they refused to review the evidence saying the findings of the trial court must not be disturbed. The petitioner cannot say that the Circuit Court of Appeals abused its discretion in denying the allowance of an appeal since no opinion was given, but it was error. They did not note that due process was denied or that the petitioner did not have a fair trial.

For the foregoing reasons the petitioner prays that the writ of certiorari be granted.

Respectfully submitted,

ELIZABETH NOWINSKI,
Pro Se.
(Mrs. Elizabeth Kaufman Nowinski)